Communications, Inc., 435 U.S. 589, 597 (1978) and "[e]very court has supervisory power over its own records and files * * *." Id. at 598. And, this Court has entertained motions to seal documents, I V 18, and motions for access to documents, I V 20. Indeed, the requests are themselves part of the record. I V 20.

The lack of a decision on the issue of access to the cert pool memo prior to the October 3, 2005 denial of the certiorari petition is a disqualifying circumstance. 28 U.S.C. §§ 455(a)[2] and 455(b).[3] Disqualification is appropriate for the justices who review, or appear to review, the cert pool memo and do not provide for a de novo determination of the pool memo. LaSalle Nat'l Bank v. First Conn. Holding Group, LLC., 287 F.3d 279 (3d Cir. 2002) (Judge disqualified where judicial notice of the contents of conversations between plaintiff's attorney and the district court judge's law clerk was inappropriate; the contents of the conversations were not a

---

[2] Section 455(a) - which requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned - is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 858-862 (1988)

3 It is assumed the Rule of Necessity does not apply because the Court can release the cert pool memo and provide a de novo determination, or it can abandon the cert pool process. 28 U.S.C. § 2071 (Supreme Court Rules shall be consistent with Acts of Congress.) Further, Section 455 (a) provides "a waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification." 28 U.S.C. § 455 (e).

matter of common knowledge or provable from a source of unquestioned accuracy, and the judge was not a party to the conversations.)

> As for the question whether information secured in chambers can be "personal" knowledge: although § 455 is principally concerned with knowledge that is "extrajudicial" in the sense that the judge acquires it outside a courthouse, see Liteky v. United States, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994), the Court rejected the argument that only such information can lead to disqualification. 114 S. Ct. at 1157. The point of distinguishing between "personal knowledge" and knowledge gained in a judicial capacity is that information from the latter source enters the record and may be controverted or tested by the tools of the adversary process. Knowledge received in other ways, which can be neither accurately stated nor fully tested, is "extrajudicial." * * * Off-the-record briefings in chambers, by contrast, leave no trace in the record—and in this case the judge has forbidden any attempt at reconstruction. What information passed to the judge, and how reliable it may have been, are now unknowable. * * * Mandatory disqualification under § 455(b)(1) follows. Edgar v. K.L., 93 F.3d. 256, 259 (7th Cir. 1996), cert. denied, 519 US 1111 (1997).

The order denying the petition for writ of certiorari should be vacated. The interests of justice consider the risk of injustice to the parties, the risk denial will produce injustice in other cases, and the risk of undermining confidence in the judicial process. Liljeberg, 486 U.S. 847.

As a litigant the petitioner has a right to seek court documents. Nixon , 435 U.S. at 597 (1978). Conversely, Clerk personnel have no right to adjudicate the merits or elevate the power of the Clerk above the authority of the Court. Ex Parte Morgan, 114 U.S. 175. Such action demands the Court exercise its supervisory power or lose its authority. Id.

The admission the Circuit Judges read counseled but do not read pro se papers but and relies solely on the staff attorney memo creates a special negative deference which assumes the staff attorney memo is correct. So too reliance on the cert pool memo does, or appears to defer to the cert pool memo which is also endowed with a presumption of truthfulness. The check of one nonparticipating Justice is inadequate because the Justice accepts, or appears to accept, staff recommendations to deny certiorari as dispositive. Thus, the outcome would have a substantial impact on the case.

Finally, the petition for the writ of certiorari is in part based on the Third Circuit's prejudgment bias against pro se litigants and cases. Similarly, matter of whether the Clerk and cert pool exercise too much power and whether the cert pool process is fundamentally fair does not promote confidence in the judiciary. Indeed, in light of the Clerk's refusal to file and present these issues for your adjudication, it only raises the issue in this court.

Conclusion

Accordingly, the Court is asked to vacate the October 13, 2005 order denying the petition for a writ of certiorari, permit the filing of the motion for access to the cert pool memorandum, and making a judgment concerning certiorari in light of its review of the cert pool process.

Respectfully,

Submitted October 28, 2005

Substituted November 4, 2005

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

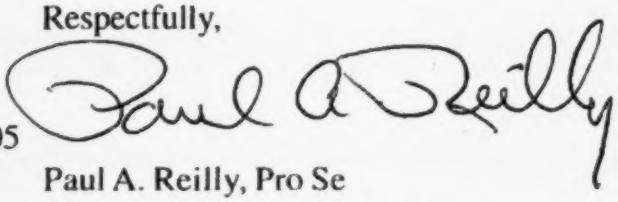
Pro Se Certificate

A pro se petition, I hereby certify that this petition for rehearing is presented in good faith and not for delay and deals with matters arising since the submission of my Petition for a Writ of Certiorari.

Respectfully,

Submitted October 28, 2005

Substituted November 4, 2005



Paul A. Reilly, Pro Se

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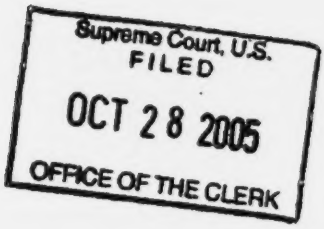

No. 04-1686

In The Supreme Court of the United States

Paul A. Reilly,

Petitioner(s)

v.

Alvin Weiss, Philip M. Freedman, Richard C. Camp, Arlene Albino, Toby Kleinman, Ilene Miklos, Timothy Welles, Mathias Hagovsky, David Brodzinsky, James Wulach, and Theresa M. Pagano

Respondent(s)

On Petition for Writ of Certiorari
to the Third Circuit Court of Appeals

REHEARING APPENDIX

Paul A. Reilly, Pro Se
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

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*Page numbers 144-166 , located in the upper left hand transcript page corner follow the page number found in the transcript of the day's hearing prepared by Neal R. Gross, Court Reporters and Transcribers, 1323 Rhode Island Ave., N.W., Washington, D.C. 20005-3701.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

October 3, 2005

William K. Suter
Clerk of the Court
(202) 479-3011

Mr. Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly
v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
s/ William K. Suter

William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 23, 2005

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

RE: Reilly v. Weiss, et al.
No: 04-1686

Dear Mr. Reilly:

The papers pertaining to the above-entitled case received September 23, 2005 herewith returned for the reasons stated in prior correspondence.

Sincerely,
William K. Suter, Clerk

By:
s/ Jeffrey Atkins
Jeffrey Atkins
(202) 479 - 3263

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 15, 2005

Mr. Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly
v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

The petition for a writ of certiorari in the above entitled case was filed on October 18, 2004 and placed on the docket June 15, 2005 as No. 04-1686.

Forms are enclosed for notifying opposing counsel that the case was docketed

Sincerely,
William K. Suter, Clerk

by

s/Jeffrey Atkins
Jeffrey Atkins
Case Analyst

Enclosures

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

June 15, 2005

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

RE: Reilly v. Weiss, et al.
No: 04-1686

Dear Mr. Reilly:

The motion pertaining to the above-entitled case received June 14, 2005 is herewith returned. The Rules of this Court make no provision for filing a motion for access to the certiorari pool memorandum.

Sincerely,
William K. Suter, Clerk
By:
s/Jeffrey Atkins
Jeffrey Atkins
(202) 479 – 3263

Enclosures

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479.3011

July 22, 2005

Mr. Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly
v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

The motion seeking access to the pool memorandum in your case was received July 21, 2005, and is herewith returned. Pool memoranda are not public documents.

Very truly yours,
WILLIAM K. SUTER, Clerk

By
s/Christopher W. Vasil

Christopher W. Vasil
Chief Deputy Clerk

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
202-473-3014
Fax 202-479-3204

August 18, 2005

Paul A. Reilly
153 Park Avenue
Randolph, NJ 07869

Re: Paul A. Reilly v. Alvin Weiss, et al.
No. 04-1686

Dear Mr. Reilly:

This is in response to your letter, dated August 1, 2005, regarding papers that were returned to you from this office on June 15,2005 and July 22,2005.

You were attempting to file a motion seeking access to the pool memorandum. Since pool memoranda are not public documents, the papers were correctly returned to you both times. Based upon my review, I have concluded that no errors were committed by any member of this office in reviewing and returning these documents to you.

Sincerely,

s/William K. Suter

William K. Suter
Clerk of the Court

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Mr. Jeffrey Atkins
C/O Clerk of the Court
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

July 2, 2005

Mr. Chris Vasil
C/O Clerk of the Court
United States Supreme Court
1 First Street, N .E.
Washington, D.C. 20543

RECEIVED
JUL – 6 2005
Office of the Clerk
U.S. Supreme Court

Re: Reilly v. Weiss, et. al.
Docket No. 04-1686

Dear Mr. Jeffrey Atkins and Mr. Chris Vasil,

Enclosed with this original, sent to Mr. Atkins, is a copy and a self addressed and stamped envelop prepared to be sent to me *by* certified mail with return receipt. Please stamp the copy and return it to me in that envelope.

The purpose of this letter concerns our 06/23/05 and 06/28/05 discussions concerning the filing of my motion for access to the cert pool memo.

I continue to believe the motion is proper under the Rules and should be docketed. However, as Mr. Atkins has advised me there is no time constraint on resubmission and given the intensity of your opposition to said motion further soul searching is appropriate. Hence, as Mr. Atkins knows, I will take several more days to try to better

understand your position in deciding and apprising you of whether I will resubmit the motion.

Thank you

s/ Paul A. Reilly
Paul A. Reilly

CC: (w / encls) Solicitor General, all counsel

Paul A. Reilly
153 Park Avenue
Randolph, N.J. 07869
(973) 945 - 1078

Mr. William K. Sutter,
August 1, 2005
Clerk C/O Ms. Lynn Holtz
Assistant/Secretary to the Clerk United States Supreme Court
1 First Street, N.E
Washington, D.C. 20543

Ms. Lynn Holtz
Assistant/Secretary to the Clerk United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Re: Reilly v. Weiss, et al.
Docket NO. 04-1686

Dear Clerk Suter and Ms. Holtz,

This letter is written as I have been unable to contact Ms. Holtz by telephone (except voice mail identifying myself). Mr. Atkins claims Ms. Holtz referred my call to him. I told Mr. Atkins and noted on Ms. Holtz' voice mail that Mr. Atkins can not help in this matter.

I am contacting you in regard to certain difficulties I am encountering in seeking to file an unspecified motion. The short of the matter is Mr. Vasil and Mr. Atkins are shaping the record and preventing public scrutiny by refusing to docket certain motions and are blocking access to the Court on Constitutional and other matters of substance by refusing to submit the motions to the Court. I know of no authority, and cannot imagine there is any authority, for a clerk exercising such powers. Nevertheless, the